

Arizona Department of Education

Health and Nutrition Services

**Food Service Management Company
Guidance Manual for Local Education
Agencies**

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Introduction

Contracting with a Food Service Management Company (FSMC)

Getting started-

Once a district or charter school decides to participate in the Child Nutrition Programs (CNP), the next step is to decide which programs to participate in and who will prepare the meals for their students. The school should decide if they want to participate in the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Special Milk Program (SMP), and the Summer Food Service Program (SFSP) or any combination of these programs. If the school doesn't want to be responsible for preparing their own meals or having them catered then the only option left is to hire a Food Service Management Company (FSMC) to operate all or a portion of the food service operations such as: hiring employees, ordering food and supplies, making the meals and other activities as deemed necessary.

Completing the process-

To hire a Food Service Management Company (FSMC) the school has to go through a few steps that are detailed in this manual. It is critical that these steps are followed because they are requirements set by the federal and state procurement regulations to participate in any of the child nutrition programs listed above. The federal and state regulations will be stated throughout this manual to reference why a particular step or inclusion is needed for the process of hiring a FSMC. We suggest that schools allow adequate time to complete all the steps to make sure all the steps are done correctly. This also gives the school time to take a look at the various aspects of their food service operations including finances, personnel and administration to determine how a FSMC may meet their particular needs. **Please remember that this manual is provided as resource tool to assist schools during the process and it is not intended as an endorsement or recommendation by ADE to utilize the services of a FSMC.** In addition, seeking legal counsel or advice is highly recommended when drafting a contract of any kind.

Achieving the desired results-

Finally, it is important to remember that hiring a FSMC does not allow the school to turn over all the responsibilities required to run any of the Child Nutrition Programs. The school will still have a number of responsibilities and duties that they will need to complete to remain on the various programs. For a complete list of the LEA responsibilities please refer to page 9. For instance, the school will still be responsible for:

1. Submitting their applications and claims to the State on the CNP Web
2. Performing all tasks involving determining the eligibility of the students attending the school, including distributing, reviewing income applications and assigning eligibility to each student as needed.
3. Monitoring of the FSMC duties related to the terms of the contract.

The school is ultimately responsible for what happens to their nutrition program, so it is important that the school is in constant contact with the FSMC employees. This will ensure that a positive and beneficial relationship is developed and maintained throughout the term of the contract to ensure a successful and efficient food service program for all interested parties.

GLOSSARY OF TERMS

For the purposes of this guidance, the term:

ADE means the Health and Nutrition Office of the Arizona Department of Education.

Attachment means any item the Solicitation requires an Offeror to submit as part of the Offer.

Bid means an offer to perform, in accordance with specifications and conditions, for a stipulated price.

Code of Federal Regulations (CFR) means the codification of the general and permanent rules published in the *Federal Register* by the Executive departments and agencies of the Federal government. Refer to 7 CFR Part 3016.36 for the Federal standards governing procurements made by State Agencies, Local Education Agencies and other local program operators. For more information go to:

www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3016_04.html

Commodities means foods donated, or available for donation, by the United States Department of Agriculture (USDA).

Competitive Sealed Proposals means a method of procurement whereby proposals are requested from a number of sources and the request for proposal is publicized, discussions are conducted, if applicable, with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive sealed proposals may be used if conditions are not appropriate for the use of competitive sealed bids. See Request for Proposals (RFP)

Competitive Sealed Bids means a method of procurement whereby sealed bids are publicly solicited and a firm fixed-price contract is awarded to the responsible and responsive bidder whose bid, conforming with all the material terms and conditions of the invitation for bid, is lowest in price. See Invitation for Bids (IFB)

Contract means a formal, legally enforceable agreement duly executed by the authorized representatives of the LEA and the food services contractor that calls for the provision of services, materials, supplies or equipment by the food service contractor in accordance with all conditions and specifications in the bid/proposal documents, for a price to be paid by the LEA.

Contract Documents means the bid specifications, requirements, the invitation for bid, the request for proposal and the contract, as applicable.

Cost-type Contract means a contract in which the contractor is paid on the basis of the costs it incurs. The term includes cost-plus-fixed-fee contracts and subcontracts therein. However, the term does not include any subcontracts under a fixed-price contract.

Donated Foods see Commodities

Equipment means an article of tangible personal property that has a useful life of more than one year and an acquisition cost of \$1000 or more. State law or policy may set stricter capitalization thresholds for equipment than the one set by Federal standards. Any LEA may use its own definition if its definition would at least include all items of equipment as defined here.

Exhibit means any item labeled as an exhibit in the solicitation or placed in the exhibits section of the solicitation.

FNS means the Food and Nutrition Service of the United States Department of Agriculture (USDA).

Fixed-price means a price is guaranteed for a specific period of time.

Fixed-price Contract means any contract except a cost-type contract. The term includes firm fixed-price contracts. It also includes contracts under which the contractor is paid at a fixed rate per unit of service or unit of labor time.

Food Service Management Company (FSMC) means a commercial enterprise or a nonprofit organization that is or may be contracted with by the LEA to manage any aspect of the school food service.

Invitation for Bids (IFB) means an instrument of competitive sealed bids. An IFB is used to publicly solicit sealed bids. An IFB contains specifications and pertinent attachments that clearly define the items or services needed in order for bidders to properly respond to the invitation.

Local Educational Agency (LEA) means a sponsoring organization (district or charter) of the Child Nutrition Programs.

Nonprofit School Food Service means all food service operations conducted by the Local Education Agency principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food services.

Offer means bid, proposal or solicitation

Offeror means a vendor who responds to a solicitation.

Processor means, as defined in 7 CFR 250.3, "... any commercial facility, which processes or repackages donated foods. However, commercial enterprises which handle, prepare and/or serve products or meals containing donated foods on-site solely for the individual recipient agency under contract are exempt under this definition."

Procurement means the process of obtaining goods and/or services in accordance with applicable rules and regulations.

Request for Proposals (RFP) means an instrument of competitive sealed proposals. The RFP is used to solicit proposals from a number of sources. The RFP identifies the goods or services needed, all significant evaluation factors and the importance of each factor.

Responsible Bidder means a bidder who is qualified by experience, equipped to perform the work required or furnish the necessary material indicated in the specifications, and who has the necessary financial backing and ability to complete the contract.

Responsive Bidder means a bidder whose bid conforms with all the material terms and conditions of the IFB.

Solicitation means an Invitation for Bid (IFB), a Request for Proposals (RFP) or a Request for Quotations (RFQ).

7 CFR Part 3016 means USDA's regulations regarding the administration of grants and the procurement provisions.

7 CFR Part 3017 means USDA's regulations regarding debarment and suspension.

7 CFR Part 3018 means USDA's regulations regarding lobbying activities.

Small Purchase means relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing not more than \$33,689 (\$50,000 for Charter Schools only), or as otherwise specified by State law; provided that such amount is not more than \$33,689 (\$50,000 for Charter Schools only).

Vendor means a merchandiser of complete meals, meal components, or raw materials.

CHAPTER 1

Responsibilities and Considerations



Deciding to Use a FSMC

The steps listed below are suggestions when deciding if your school should use a FSMC:

1. **Analyze Food Service Operation** – conduct a needs analysis of the current food service operation to determine what method of providing food service best meets the LEA's goals and objectives. This is a requirement of the Auditor General if you choose to outsource for the first time or you currently operate with a vendor.
 - Determine the current cost of operating the food service.
 - Determine all costs that will be affected by contracting with a FSMC. These could include, but not limited to personnel costs, food costs, other labor costs and any additional responsibilities that must be met by the LEA regardless of whether a FSMC is contracted.
 - Analyze all other aspects of the current food service operation that do not financially impact your food service department to determine the impact of utilizing a FSMC (e.g., nutrition goals and nutrition education activities).
 - Identify the functions that might be contracted, and the benefits and costs of contracting each.
2. **S.W.O.T.-** Strengths, Weaknesses, Opportunities and Threats.
3. **Contact the Health and Nutrition Office at the Arizona Department of Education (ADE)** – contact the ADE to obtain information on FSMC's operating within the State, the names of LEA's currently using FSMC's and technical assistance, if needed. For more information contact Brian Walsh, Health and Nutrition Contracts Officer at (602) 542-6208 or Brian.Walsh@azed.gov
4. **Contact Other LEA's** – contact other schools who are currently using FSMC's. They may be able to provide insight on how they contracted with their FSMC and what steps should be taken to make sure everything goes smoothly. This is a good opportunity to ask questions about the other schools experience with a FSMC.



5. **Hire a consultant** – if your school lacks the necessary technical skills and resources to do a thorough and effective analysis, then consider contracting with a consultant as a viable option.

LEA Responsibilities

If your school decides to use a FSMC, **the LEA remains responsible for the overall operation of the school nutrition programs**. This responsibility requires that the LEA retain and maintain direct involvement in the operation of the food service with the FSMC. For a complete list of the LEA responsibilities refer to the LEA-FSMC documents checklist at our web site: www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp

The following LEA responsibilities must NOT be given to a FSMC to perform:

1. **Development of Solicitation Documents** – this refers to the drafting or development of solicitation documents issued prior to the award of the contract (refer to 7 CFR 3016.60 (b) for more details). These documents include, but are not limited to:
 - a. Bid specifications,
 - b. Invitation for bid (IFB) or the request for proposal (RFP)
 - c. LEA-FSMC contract, as applicable. (For example, Section 210.16(c)(3) specifically addresses the LEA's development of specifications for each food component or menu item and requires these specifications to be included in the IFBs or RFPs. Specifications must cover items such as grade, purchase units, style, condition, weight, ingredients, formulations, and delivery time).
2. **Program Oversight** – make certain that the food service operation is in compliance with the LEA's agreement with the ADE. The LEA is ultimately responsible to ensure the Food Program Service Agreement is followed and maintained during the entire contract term with ADE. Also, the LEA has the responsibility for all contractual agreements entered into in connection with the school nutrition programs. The LEA is held responsible to resolve program reviews and audit findings if applicable.
3. **Food Service Account and Overall Financial Responsibility-** Retain control of the non-profit school food service account and overall financial responsibility for the non-profit food service operation. Retain control for the establishment of all prices, including price adjustments for meals served under the non-profit school food service account, e.g. pricing for reimbursable meals, a la carte service including vending machines and adult meals.

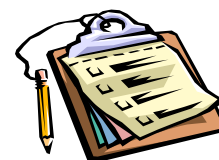


4. **Monitoring** – monitor the food service operation through periodic on-site visits.
5. **Control the Quality, Extent and Nature of Food Service** – retain control of the quality, extent and general nature of the food service and the prices to be charged to the children for meals. Such control must include:
 - a. Retain control of the nonprofit school food service account and overall financial responsibility for the school nutrition programs
 - b. Establish all prices for all meals served under the nonprofit school food service account (e.g., pricing for reimbursable meals, a la carte food services and adult meals, as applicable).
 - c. Develop the 21-day cycle menu in accordance with the meal pattern requirements specified in 7 CFR Part 210
 - d. Convey menu adjustment requirements to the FSMC and monitor implementation of those adjustments.
 - e. Make certain that any refunds received from processors must be paid to the LEA.
6. **Signature Authority** – retain signature authority on the agreement to participate in the NSLP, SBP, SMP and SFSP. **This also includes the LEA's free and reduced price policy statement and the claim for reimbursement.**
7. **Free and Reduced Price Meal Process** – determine eligibility for free and reduced price meals and free milk in accordance with 7 CFR Part 245. The LEA will determine eligibility and have the signature authority on all submitted income applications and will not delegate this duty to the FSMC. Additionally, the LEA will conduct any hearings related to such determinations and verification of applications for free and reduced price meals.
8. **USDA Donated Foods** – ensure that all USDA donated foods received by the LEA are made available to the FSMC. The LEA needs to monitor and confirm that these items are only used to the benefit of the LEA's nonprofit school food service and are fully utilized. The LEA is to retain title to USDA donated foods and should oversee the USDA donated food inventory. A system that outlines or describes how the FSMC will pass the value of the USDA donated foods used for the LEA. Commodities may not be used for special functions or catering outside the non-profit food service.
9. **Health Certification** – maintain valid and necessary health certification(s) and assure that all State and local regulations are being met by the FSMC preparing or serving meals at a LEA facility.
10. **Establishment of an Advisory Board** – establish and maintain an advisory board composed of parents, teachers and students to give suggestions and help with menu planning.



11. **Development of the 21-Day Cycle Menu** – develop the 21-day cycle menu for the FSMC bid proposal. If the LEA is unable to develop a 21-day cycle menu.
12. **Internal Controls** – apply the internal control procedures required by 7 CFR 210.8(a) to the preparation of the monthly Claim for Reimbursement. The signature authority representative from the school will be the only individual with the rights and ability to submit monthly claims on the ADE CNP web system. This duty shall not be delegated to the FSMC to complete.
13. **Hazard Analysis and Critical Control Point (HACCP)**- ensure compliance with the new Federal legislation requiring a food safety management system that complies with Hazard Analysis and Critical Control Point (HACCP) principles or meets the USDA guidance effective July 1, 2006.
14. **Local Wellness Policy-WIC Reauthorization Act of 2004 (Public Law 108-265)** ensure compliance with new Federal legislation requiring every LEA participation in the National School Lunch Program (NSLP), School Breakfast Program (SBP) or Special Milk Program (SMP) to develop a local wellness program by July 1, 2006.

Food Service Management Company (FSMC) Responsibilities



When contracting with a FSMC, it is important to understand that the FSMC has the following responsibilities and duties. For a complete list of the FSMC responsibilities refer to the LEA-FSMC documents checklist on our web site at:

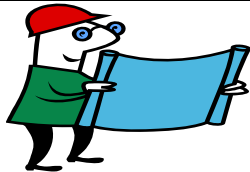
www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp

1. **Health Certification** – maintain all valid State and/or local health certification(s) for the length of the contract for any facility outside the school in which it proposes to prepare meals. The FSMC must meet all applicable State and local health regulations in preparing and serving meals at the LEA facility.
2. **21-Day Cycle Menu** – follow the 21-day cycle menu which was included in the IFB or RFP for the first 21 days of meal service. Changes made to the menu after the 21-day period can only be made with the approval of the LEA.
3. **Provision of Free and Reduced Price Meals** – in order to offer a la carte food service, the FSMC must also offer free, reduced price and full price reimbursable meals to all eligible children.
4. **USDA Donated Foods** – to the maximum extent possible, use the USDA donated foods that the LEA will have available to use for their meal times.

These foods will be used only for the purpose of providing benefits for the LEA's non-profit food service operation and shall not be used for outside events such as catering or school parties.

5. **Recordkeeping** – the FSMC shall:
 - a. Maintain records to support the LEA's Claim for Reimbursement submitted to ADE;
 - b. Make all records available to the LEA upon request;
 - c. Retain all records for a period of three (3) years after the LEA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the LEA, ADE, USDA and Comptroller General, at any reasonable time and place. In instances where audit findings have not been resolved, the records must be kept beyond the 3-year period until any and all issues raised by the audit are resolved.
6. **Reporting** – report the claim information to the LEA promptly at the end of each month or more frequently as determined and requested by the LEA.
7. **Civil Rights**- assurance that the FSMC will conform with all civil rights requirements applicable to the LEA.
8. **Buy American Provision**- compliance with the Buy American provision per regulations.

Scope of Services



Once the decision to hire a FSMC has been made the following items should be considered.

1. **Identify Scope of Work** – determine the general extent or scope of work to be performed by the FSMC, i.e.:
 - a. Identify which federally reimbursable program(s) or nonprofit food service activities the FSMC will be involved in, e.g., NSLP, SBP, a la carte sales during and/or between meal service periods, after hours snacks under the NSLP or meal/snack service under the Child and Adult Care Food Program/Summer Food Service Program.
 - b. Decide if the operation of any LEA vending machines will be turned over to the FSMC. The LEA needs to communicate the rules and regulations of operating vending machines during the school day. The students cannot have access to buy any product from a vending machine that falls into the Foods of Minimal Nutritional Value (FMNV) during the meal service.

- c. Decide if the FSMC will cater any special activities and/or be involved in any food service activity outside the nonprofit food service.
2. **Identify Responsible Personnel** – identify LEA personnel responsible for managing the LEA-FSMC contract and meeting the LEA's responsibilities. This would include the existing responsibilities that cannot be delegated to the FSMC as outlined above and the new responsibilities that will occur under the LEA-FSMC contract.
3. **Select Method of Procurement** – determine which type of procurement (RFP or IFB) to use that will meet the LEA's needs
4. **Develop Contract Documents** – for competitive sealed bid procurement, the contract document is the IFB which includes specifications and pertinent attachments which clearly define the items and services.



Under a Request for Proposal (RFP), all non-negotiable components of the contract should also be included in the proposal. In either type of procurement, it's highly recommended to have the contract or contract provisions reviewed by the LEA's legal counsel.

The LEA is encouraged to provide specific information about the food service. Essential information may include:

1. Number of school buildings
2. Meal prices
3. Number of students available to participate for lunch meal
4. Meal preparation facilities
5. Number of serving days
6. Historical information on quantities/types of USDA donated foods available
7. Federal reimbursement rates
8. Meal service hours
9. Food service and serving methods
10. Number of meal service periods
11. Commodity usage
12. Estimated serving counts
13. Personnel salaries and benefits
14. Total revenues and total operating costs.

Contracts or RFP/IFB written by a FSMC are not allowed since they would compromise open and free competition. For more information about developing an RFP visit our website: www.ade.az.gov/health-safety/cnp/nsfp/Operating/ContractingforMealService.asp



IMPORTANT STEPS TO REMEMBER BEFORE YOUR DISTRICT OR CHARTER SCHOOL CAN GO OUT FOR SOLICITATION:

1. Draft the RFP/IFP to meet schools needs
2. Submit the IFB/RFP to ADE for approval **before** advertising and releasing the solicitation.
3. ADE will review the IFB/RFP to make sure that all required terms and conditions are included in the document.
4. **After the district or charter school receives ADE approval, the LEA may proceed with the solicitation process.** 7 CFR 210.19(a)(6) requires the ADE to annually review each contract to ensure compliance with all the provisions and standards set forth in 7 CFR 210.16. Therefore, all contract amendment documents must be submitted to and reviewed by the ADE prior to the approval of the contract.

CHAPTER 2

Procurement Options & Procedures

Before a district or charter school can create and sign a contract with any company, regardless of the product or service the school personnel needs to decide on how they will obtain that item or service. This process of deciding what type of procurement method to use is an important step, so it should be carefully considered and planned. For more information please refer to the Arizona School District Procurement Code. The two most frequently used methods of procurement with costs above the competitive sealed bid threshold for a FSMC are:

1. **Competitive Sealed Bids**-commonly referred to as an Invitation for Bid (IFB)
2. **Competitive Sealed Proposals**-commonly referred to as a Request for Proposal (RFP)

Open and Free Competition

The most important piece of all procurement regardless of the dollar value and the method used, the procurement must be conducted in a manner that provides maximum open and free competition. Procurement procedures must not restrict or eliminate competition. Examples of such restrictions include, but are not limited to:

1. **Unreasonable Requirements** – the IFB/RFP may not place unreasonable requirements on companies in order for them to qualify to do business, e.g., requiring unnecessary experience and bonding requirements.
2. **Noncompetitive Practices** – promoting or supporting noncompetitive practices. An example of this would be a requirement for the FSMC to buy B (specific type of tray), in order to get A (type of tray line system) which you want to have in your kitchen. A monopoly in A (tray line system) can be expanded to B (trays) (anti-competitive and illegal)
3. **Conflicts of Interest** – conflicts of interest can occur when other individuals within the organization overrule the individual(s) responsible for selecting bids/proposals and awarding contracts. This can also happen if the individual awarding bids or proposals (or any member of his or her family) has any personal or corporate ties or any financial interest in any of the offering companies.

4. **Inappropriate Practices** – the following would be considered inappropriate:
 - a. Using specification information or other documents prepared by FSMC's in the IFB or RFP;
 - b. Entering into discussions with a company prior to evaluating every proposal that was submitted to the school for that service.
 - c. Discussions with any bidder at any time when the competitive sealed bid procurement method is used unless specifically allowed in the procurement code.
 - d. Providing only certain firms with the results of pre-bid meetings or releasing the contents of a bid proposal to other bidders/proposal offerors.
5. **Insufficient Time** – not allowing bidders/offerors enough time to submit an offer when advertising/soliciting the IFB/RFP.
6. **Preferences** – awarding geographic/local preferences in contractor selection to an extent that restricts competition.

Competitive Sealed Bids (IFB)

Competitive sealed bids are usually the best method to use when the LEA wishes to have a fixed-price (lump sum or unit price) contract.

Issues to consider when using competitive sealed bids include:

1. **Fixed Scope of Services** – the LEA has identified exactly which services and costs it wishes to contract out to the FSMC.
2. **No Negotiation Involved** – the LEA either does not wish to negotiate or lacks the needed experience to negotiate price and contractual responsibilities with the FSMC.
3. **Legal Advice is Needed** – the LEA should obtain legal advice in the development of a contract for inclusion in the IFB, if applicable.
4. **Competition Available** – more than one FSMC is willing and able to compete for the contract.



5. **Needed Information** – the place and time the bids will be opened and the award made must be included in the invitation as well as any information concerning pre-bid meetings and the need for board approval of the selected bidder. If a bid and/or performance bonds will be required, the amount, any requirements concerning the bonding firm, and when the bond(s) must be provided to the LEA must be included in the invitation (see section regarding when to request a bid bond).
6. **Responsible /Responsive Bidder** – the bid will be awarded to the lowest responsible and responsive company.

The LEA must include enough information in the IFB to allow bidders to respond correctly to the IFB. This helps the LEA determine how interested and responsive the FSMC is to the bid. The interest and response and the ability for the FSMC to respond to all questions and conditions can be used as part of the selection criteria when determining what company will be awarded the contract.

Additionally, the IFB should also specify how bidders will show compliance with the terms and conditions within the IFB. For example if the IFB requires a copy of the food handlers licenses, the bidder should provide it as requested. Open-ended criteria should not be used in IFB's. An example of this would be asking how the FSMC would remodel the kitchen.

It is also important to find out if the bidder is a **responsible** company. There are several factors to think about such as contractor integrity and prior working relationships with the company. Additionally, the school should ask for a list of the contractors experience with other schools for the same type of service as well as the company financial and technical resources. Requesting the names of three references is also highly recommended (Refer to R7-2-1076 of the school district procurement code).

Advantages of Competitive Sealed Bids (IFB)

The advantages of using competitive sealed bids include:

1. **Advance Preparation** – the contract may be prepared prior to seeking bids. In some cases the IFB and the bidder's response become the contract. This generally allows the LEA to better estimate costs and assign staff resources before the effective date of the contract.

The pre-bid preparation of the contract also allows the LEA to set up its legal team to review the contract provisions for legal sufficiency without the pressures of negotiation.

2. **Easier Identification of Revenues and Expenses** – fixed-price contracts easily permit the LEA to see expected revenues and expenses, as well as the total likely cost of the contract.
3. **No Negotiation Responsibilities** – the LEA does not have to negotiate either the cost or the responsibilities asked for in the IFB with bidders.
4. **Simplified Monitoring** – monitoring the status of the nonprofit food service account is not difficult. Transactions are restricted to processing billings from and payments to the FSMC; the FSMC does not pass costs on to the LEA's.

Disadvantages of Competitive Sealed Bids (IFB)

The disadvantages of using competitive sealed bids include:

1. **Demands Precise Identification of Needs** – if the bid document does not clearly list and outline the services requested, the bid prices and the services provided by the FSMC may not be reasonable or meet the needs of the LEA.
2. **May Limit Competition** – during times of quickly rising prices, potential bidders may turn down the chance to bid on a fixed-price basis or bid overly high. In situations where prices are declining, fixed-price contracts do not allow the LEA to benefit from the decline.

Competitive Sealed Proposals (RFP)

Competitive sealed proposals are useful when the LEA has outlined what it expects a FSMC to do, but has not identified how it will be accomplished.

This type of procurement is worthwhile when the LEA would like to use discussions with prospective offerors for the purpose of negotiating price. The resulting contract may be fixed-price or cost-based reimbursement.



IMPORTANT: Unlike the cost-plus-fixed-fee method, “**cost-plus-a-percentage-of-cost**” or “**cost-plus-a-percentage-of-income**” contracting is not permitted.

If cost-reimbursable contracts are used, the RFP should require that the offerors provide a maximum cost, i.e., a cap. Whatever type of contract cost system is used, the LEA must have enough information upon which to plan the total anticipated cost of the contract.

Factors to consider when using competitive sealed proposals include:

1. **Technical Skills Needed** – the LEA must have the technical skills needed to evaluate the proposals and negotiate with the offerors. These skills usually include knowledge of procurement and contracting, school food service, and financial management.
2. **Legal Advice Needed** – while the LEA must prepare a descriptive RFP, the actual contract may not be prepared until after the proposals are evaluated. As a result, the LEA's legal authority should be available to look over the RFP and contract and make sure that the statements and agreements in the contract reflect the agreement reached between the successful offeror and the LEA.
3. **Monitoring Costs Required** – under a cost-reimbursable contract, the LEA must monitor the costs acquired under the contract on their own for compliance with program regulations and instructions (OMB Circular No. A-87).
4. **Careful Preparation of Evaluation Criteria** – the criteria that will be used to evaluate the proposals, and a weighted scale (recommended but not required) should be carefully prepared and included in the RFP. These criteria must be followed when the LEA evaluates the proposals. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award.
5. **Requires Inclusion of All Important Information** – the due date for proposal submission must be included in the request. It is also important that any information concerning pre-proposal meetings and the need for board approval of the selected offeror is included. If a performance bond will be required, the amount, any requirements concerning the bonding firm, and when the bond must be provided to the LEA must be included in the proposal.

Advantages of Competitive Sealed Proposals (RFP)

The advantages of using competitive sealed proposals include:

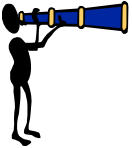
1. **Flexibility in Assigning Responsibilities** – depending on the responses received from the offerors, the LEA decides which duties will be performed by the FSMC. LEA's must make sure that the LEA responsibilities specified in Chapter 1 are not given to the FSMC to perform.
2. **LEA's Benefit During Periods of Falling Prices** – RFPs that result in cost-reimbursable contracts allow the LEA to take advantage of price declines during periods of falling prices.



3. **Greater Flexibility in Selecting FSMC** – the LEA has somewhat more flexibility in choosing a FSMC because the LEA is not limited to selecting the offeror that submits the lowest price.

Disadvantages of Competitive Sealed Proposals (RFP)

The disadvantages of using competitive sealed proposals include:



1. **Complex Monitoring** – the monitoring of income and expenses under the contract will be more complex because:
 - a. The Federal cost principles referenced in 7 CFR Part 3015, Subpart T, apply to cost-type contracts. This means the LEA must review specific items of cost the FSMC charges to the food service account to make sure that the costs charged were what was expected and written in the contract. **The FSMC shall not pass unallowable costs on to the LEA.**
 - b. The timing of when expenses reports are completed each month will affect the status of the food service account. If the FSMC records expenses on the cash basis of accounting and bills the LEA accordingly, it will bill for goods and services at the time they are purchased. Under the accrual basis of accounting, the FSMC would record expenses and bill the LEA when the goods are actually used in the food service operation.

The accrual basis of accounting is the **preferred** method because it measures the benefits collected from the FSMC's purchases. Cash basis billing can distort this measurement. It can create overstated expenses and an understated account balance at the time of purchase, and the reverse situation at other times. The LEA can correct the problem by making adjustment entries. If the FSMC does not use the purchased goods at the same rate from month to month, the LEA must recalculate the adjustment entry each month.



2. **Unbudgeted Costs During Times of Rising Prices** – RFPs that become cost-reimbursable contracts may result in additional costs to the LEA during times of rising prices and costs to run the food service operation.
3. **The Chance of Going Back to Square One** – under a RFP, the contract is prepared based upon the proposal determined to be most advantageous to the district. The contract should not be completed and signed until the ADE reviews and approves the document. If defects or problems are noted, it may be necessary for the LEA to reopen discussions to correct the problem.

4. **The Art of Negotiation is A Needed Skill** – the discussion process requires that the LEA have significant skill and experience in negotiating, contracting and financial management. It may be necessary for the LEA to hire individuals to provide the needed expertise, which can cost a school additional money. **Trying to negotiate without the needed expertise can result in the LEA entering into a contract that meets regulatory requirements and is fully enforceable, but can cause financial, administrative or personnel problems for the LEA.**
5. **Unexpected Responsibilities** – to the extent that the LEA has not identified whether it or the FSMC will perform certain functions, the LEA may take on duties and related costs they had not planned or budgeted.



CHAPTER 3

Advertising

Solicit Bids/Proposals

The LEA must seek bids/proposals in accordance with State/local procurement rules. Refer to the Arizona School District Procurement Code for more information. To meet the Federal standards, State/local procedures should provide enough time, prior to the date for opening of bids/proposals, to allow plenty of time to prepare and submit the bids/proposals.

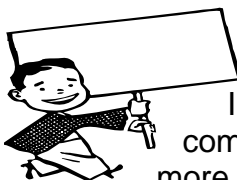
If, after solicitation of a number of sources, competition is found to be inadequate, an award may be made to the single bidder/offeror if the school determines that the price submitted is fair and reasonable and the most advantageous to the school. In such instances, the LEA must maintain documentation of its efforts to search for prospective bidders.

Time Allowed



Unless otherwise stated by State or local procurement standards, it is suggested that at least **30 days for IFBs and 45 days for RFPs** be allowed from the time bids/proposals are solicited to the time that they are due. (It should be noted that a lot more time must be given for a procurement under a RFP to allow for such things as proposal evaluation, discussion with offerors, contract development, etc.) Provided that the IFB/RFP has been properly prepared, an adequate amount of solicitation time works to the advantage of both the LEA and the offeror and contributes to an effective and efficient procurement process. For a schedule of events visit our web site: www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp

Advertising Methods



Under either the IFB or RFP procurement types, bids/proposals shall be solicited directly from an adequate number of prospective FSMC's and the IFB/RFP shall be publicized in order to provide for maximum open and free competition if there are less than 5 prospective vendors (Refer to R7-2-1022 for more information). To accomplish this, copies of the complete IFB/RFP should be mailed or provided in an alternative format to potential offerors, i.e., those FSMC's that are believed to be qualified and that might reasonably be expected to respond to the solicitation. This may include FSMC's that are currently doing business with other LEA's in the State, in adjoining States, or elsewhere. Any changes to the IFB/RFP as well as any questions and answers resulting from written offeror inquiries or from a pre-bid/pre-proposal meeting must be submitted to all potential offerors. No information regarding any duties or responsibilities for either the LEA or FSMC in the IFB/RFP is considered official unless it is provided in writing. IFB/RFP should be accomplished in accordance with State/local procurement procedures. Generally this would be done by advertising in major newspapers/trade journals

that are normally used by the LEA for publicizing other procurements. It is not necessary that the entire IFB/RFP be published. At a minimum, however, the advertisement should include the IFB/RFP number and date, a brief description of what is being proposed for procurement, and instructions for obtaining a copy of the IFB/RFP.

Pre-Bid/Pre-Proposal Meeting

A LEA may conduct a pre-bid conference to explain the procurement requirements within a reasonable time before the bid opening. It is recommended that such a meeting be conducted about two weeks after the IFB/RFP is issued but before the date bids/offers are due. There are two important reasons for holding a pre-bid/pre-proposal conference:

1. **Provide Information** – to provide information about the contract performance requirements that may be helpful in the preparation of bids/proposals.
2. **Answer Questions** – to answer any questions that potential offerors may have regarding the IFB/RFP.



Furthermore, the meeting may bring to light uncertainties, errors, or any information that may have been left out of the IFB/RFP that may later be corrected through written changes to the IFB/RFP. (However, the meeting should not be held to formally make corrections to specifications that are incomplete or confusing or to distribute performance requirements in addition to those listed in the solicitation.)

The following are some items to consider in planning and running a pre-bid/pre-proposal meeting:

3. **Information Regarding Meeting** – information regarding the meeting should be a part of the IFB/RFP solicitation package. It does not need to be publicly advertised, but it must be provided to each FSMC that has received a copy of the IFB/RFP either directly or upon request. The information should include a request that questions be submitted several days before the meeting to allow the LEA prepare to respond to each question at the meeting.
4. **Recommended Attendance of Offerors** – attendance at the meeting by prospective offerors is strongly recommended, but should not be required for the FSMC if they would like to submit a bid/proposal.
5. **Information Provided in Writing** – information provided by the LEA at the meeting should not be considered official until provided in writing to all FSMC's that have received the IFB/RFP. Following the meeting, the LEA should prepare a set of questions and answers that were covered at the meeting and should mail or provide in an alternative format to all prospective offerors.

CHAPTER 4

Bid/Proposal Openings and Evaluations

It is necessary that bid/proposal openings and evaluations are carried out fairly and accurately. Inconsistent actions by the individuals in charge of this part of the FSMC procurement can result in bid protests or legal action.

Bid Openings and Evaluations

Opening sealed bids under an IFB must be conducted in public, at the time and place listed on the invitation.

Any bids received after the listed deadline will not be considered. Since the bids must be sealed to be valid, unsealed bids must be rejected.

Once the bids are opened the name of each bidder and bid price shall be recorded and made available for public inspection. The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and evaluation criteria set forth in the invitation for bids.

Since LEA's must often receive approval of all contracts by their school board, the LEA may keep from making a formal award until they receive board approval. The winning bidder should be notified of the LEA's plan to recommend acceptance of the bid, but the bidder must be clearly informed of the need for board approval. Once board approval is received, a written notice of the award should be made to the successful bidder. Usually, this written notice accompanies a copy of the signed contract. Unsuccessful bidders may be notified in writing of the award. **A copy of the unsigned contract must also be sent to the ADE in a timely manner. Upon receipt ADE will review the contract within 10 business days and once approved a copy of the final signed contract should be sent to ADE.**

Proposal Evaluation Plan

Proposals should be thoroughly reviewed and put through to an impartial evaluation. An evaluation plan should be prepared before the receipt of any proposals. Among the items that would be included in that plan are:

1. **Information on Evaluation Team** – The size of the evaluation team, the expertise needed on the evaluation team and the names of the team members. It is recommended that there be a minimum of three team members.
2. **Scoring System** – This would include the standards to be applied, the relative ranking of each standard, and how the score will be calculated, i.e., the sum of the individual team scores or an average of the total team score.

3. **Ancillary Materials** – Put together scoring sheets and/or forms, and any other forms or letters that may be needed. The scoring sheets should contain the evaluation criteria, standards to be applied, scoring columns and room for comments.

The individuals who will be evaluating the proposals should have enough knowledge of the goals of the LEA, experience in school food service or congregate feeding, financial management experience (of food service, if possible), and experience in evaluating proposals.

Proposal Opening and Evaluation

Proposals should not be opened or reviewed until after the due date set in the RFP. The person responsible for receiving the proposals must look after them in order to prevent opening the documents before the deadline.

It's important to involve a few people from the school administration and those who will have day-to-day contact with the management company to be a part of evaluating the proposals. This group or team of members should have the same goals and ideas on what they want from a management company and what impact the FSMC will make on their school food service department. Additionally, having more than one person making the decision is good business practice and should help keep the selection process equal and fair.

On the date set for opening and evaluating the proposals, each member of the evaluation team should score each proposal on their own. If the RFP allows alternative proposals, care must be taken to ensure that the alternative offered addresses the basic guidelines stated in the RFP. If the school determines an offeror's proposal is unacceptable, the school shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to amend its offer.

If oral presentations are a part of the RFP, great care must be taken to make sure the presentation is scored only for its content and not based how well the presentation was completed. Offerors are not allowed to change their proposals through the presentation process.

Proposals shall be based on the evaluation factors set forth in the RFP. Specific numerical weighted scales may be used but is not required. **Note: no other factors or criteria may be used in the evaluation.**

Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Refer to R7-2-1047 and 1048 for more information regarding individual discussions with individual offerors and best and final offers.

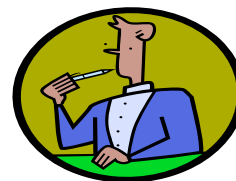
The LEA should give the successful offeror written notification, which clearly states that while the offeror has been successful during the selection process, the proposed contract has to be reviewed and approved by the ADE.

This notice should also inform the successful offeror that if minor changes are needed as a result of the ADE review, an opportunity will be provided to amend the proposal.

The letter to the successful offeror should also include if board approval is needed before the contract is signed. In addition, unsuccessful offerors/bidders may be notified they were not selected to receive the award in writing.

Analysis of Price

The contract documents should clearly explain factors to be considered in setting the price. Whether an IFB or RFP, the following factors should be considered:



1. **Prompt Payment Discounts** – prompt payment of discounts may be included as a factor for determining the price when the LEA has had past experience that would suggest the discounts should be taken at a specific time.



2. **Volume Discounts** – volume discounts can only be considered if there is a strong indication that the LEA will be able to use the discounts.

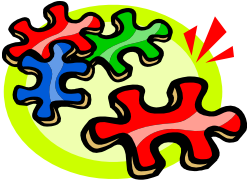
3. **Financial Incentives** – financial incentives that do not add to the nonprofit school food service account **cannot** be used to determine the price submitted.

4. **Other Benefits** – goods, services, or other benefits that do not go to the nonprofit school food service account **cannot** be used to determine the price submitted.

5. **Total Cost** – the total cost of the bid/proposal for the breakfast, lunch, a la carte meal service and any other child nutrition program meal service such as the Summer Food Service Program or the Child and Adult Care Food Program that is operated by the LEA and included in the bid/proposal request, must be used in determining the lowest offeror. **Note: it is recommended that a separate cost structure be developed for the summer food service program, if applicable.**

6. **21-Day Cycle Menu** – under a RFP, the LEA must carefully review the menu and its components to determine if it meets the meal pattern requirements specified in 7 CFR Part 210, proposal requirements, student preferences and the goals of the LEA's food service. The LEA must ensure that its evaluation and determination of proposal costs is based upon comparative menus. This may require offerors to provide enough information to make sure that the FSMC-prepared cycle menus use foods of equivalent specifications. Since negotiation with bidders is not allowed under an IFB, FSMC-submitted cycle menus are not suitable for competitive sealed bid procurement. However, it is recommended for an RFP to provide a standardized 21-day cycle menu.





CHAPTER 5

Pieces of the Contract Puzzle

The Federal government creates a list of rules and regulations for the Child Nutrition Programs to follow called the Code of Federal Regulations (CFR). The CFR also requires that contracts between schools on any of their programs (NSLP, SBP, etc) and a FSMC need to state specific regulations. The following topics will refer to the section and statements that should be included in the contract. There will also be a list of advisable inclusions that may be in the schools best interest to include, but are not required by the CFR.

Authority

The Code of Federal Regulations Section 210.16(c) states “***Contractual agreements with food service management companies shall include provisions which ensure that the requirements of this section are met.***” This regulation is expanded upon below to include program policies, related regulatory requirements and guidance. Some of the required terms are based upon the dollar upper limit of the contract. In such cases, the total dollar value of the contract must be considered, e.g., in the case of a cost-reimbursable contract, the total value of the contract must reflect the management fee as well as the direct costs obtained by the FSMC which are billed to the LEA, like food and labor.

Required vs. Suggested

Every effort has been made to outline which terms are required and those that are suggestions to include in the contract. Contract terms typed in shaded outlined boxes are Federal/State **requirements that must appear in the contract documents**. Those terms that are suggested are labeled as such.

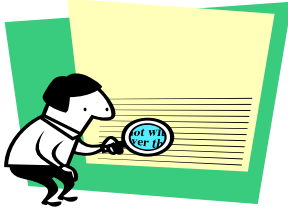


IMPORTANT- Regardless of whether a term is required to appear in the contract documents, LEA's are required to ensure that the food service is operated in accordance with program regulations.

LEA's are encouraged to include the suggested statements and regulations that add to the standard terms that must appear in the contract. These statements guarantee the LEA's best interest is in mind as long as the terms and agreements are not conflicting with program regulations. Some examples of suggested terms may include:

1. Competitive purchasing to obtain the best price and quality of food.
2. Extending the required controls of USDA donated foods to purchased food as well.
3. Requirement of the FSMC's to follow the Federal procurement and cost principles.

General Terms and Conditions



A thorough contract covers a wide range of areas that describe both the LEA and FSMC everyday jobs and duties. For more information about these responsibilities visit our website: www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp. Such duties and tasks include, but are not limited to:

1. Compliance with State and Federal Regulations

The CFR provides rules that LEA's must follow if they are to participate in any of the Child Nutrition Programs (NSLP, SBP, etc). All contracts should require that the FSMC conduct program operations in accordance with 7 CFR Parts 210, 215, 220, 225, and 250. Adaptation of program regulations provides a common basis for performance by the FSMC.

REQUIRED

Contracts must contain language that confirms the LEA's responsibility to make certain that the food service operation is in conformance with the LEA's agreement under the program. (7 CFR §210.16(a)(2))

Contracts should also contain reference to applicable State regulations, e.g., procurement, health and sanitation requirements.

LEA's may want to consider including an addendum to the LEA-FSMC contract, which summarizes Federal and State requirements.

2. Signature Authority



The contract should ensure that the LEA remains responsible for all contractual agreements for the school nutrition programs with ADE.

REQUIRED

Contracts must include terms that reaffirms that the **LEA retains signature authority for: the agreement with the ADE to participate in the NSLP, SBP, SMP, and SFSP including the LEA's free and reduced price policy statement; and the monthly Claim for Reimbursement.** (7 CFR §210.16(a)(5))

3. Free and Reduced Price Meal Process

LEA's are ***not allowed*** to give the responsibility to determine free and reduced price eligibility to any company or person(s) working for the FSMC. Therefore, contracts should not include statements that reduce the LEA's responsibility for:

1. **Determinations of eligibility** for free and reduced price meals and free milk.
2. **Verification** of free and reduced price applications.
3. **Direction of hearings** related to such determinations.

4. USDA Donated Foods



REQUIRED

All contracts must contain statements that restate the LEA's responsibility to make sure that all USDA donated foods received by the LEA and made available to the FSMC, including processed donated foods, **accrue only to the benefit of the LEA's nonprofit school food service and are fully utilized therein.** This provision also applies to any refunds received from processors. Further, all contracts must state clearly that the **LEA retains title to USDA donated foods.** (7 CFR §210.16(a)(6))

In addition, contract language **must not permit** FSMC's to enter into subcontracts for further processing of USDA donated foods on behalf of the LEA. Contract language should include terms that prohibit the use of USDA donated foods for special functions performed outside of the nonprofit school food service, like a catering event.

Contract statements that relate both to the delivery and use of USDA donated foods by the FSMC are critical in managing USDA donated foods provided to a FSMC. Therefore, LEA-FSMC **contracts should address ordering procedures, proper utilization, storage practices, and inventory control.**

NOTE: Contracts should also specify the method and frequency by which the LEA will be given the full value of USDA donated foods, including processed items. The method would differ depending on the type of contract (fixed or cost-reimbursable).

- **Fixed-price contracts:** in order to establish and document the commodity value-pass-through, the contract should specify that the credits or reductions will be indicated on the invoices to the LEA.
- **Cost-reimbursable contracts:** the value of USDA donated foods used should be itemized in the regular monthly billings to the LEA. This would document monthly or weekly savings resulting from commodity usage.

In either case, it should be specified that values are to be based on the values at the point the LEA receives the USDA donated foods from the State Distributing agency, and on the USDA commodity file prices pertinent to the time period. The appropriate commodity file is available from the State Distributing agency.

The contract should specify that the FSMC accepts liability for any neglect that results in any loss of, improper use of, or damage to USDA donated foods. This is to protect the LEA because the LEA is ultimately responsible for any loss of USDA donated foods due to negligence. The contract should require the FSMC to maintain accurate and complete records for the delivery, use, storage and inventory of USDA donated foods.



If the FSMC fails to maintain records required under the contract that failure must be considered obvious proof of incorrect distribution or loss of USDA donated foods. Under 7 CFR 250.12(b)(3), LEA's have and preserve the right to state a claim(s) against other persons to whom USDA donated foods are delivered, handled or distributed to. Under 7 CFR 250.12(b)(4), LEA's are required to take action to get repayment in connection with claims for improper distribution, use or loss of, or damage to USDA donated foods.



5. Health Certification

REQUIRED

Contract language must include a statement that **confirms the LEA's responsibility to maintain all applicable health certifications and to assure that all State and local regulations are being met by a FSMC preparing or serving meals at a LEA facility.** There must also be statements in the contract that require the FSMC to have State or local health certification for any facility outside the school in which it proposes to prepare meals for the length of the contract. (7 CFR §210.16(a)(7) and (c)(2))

6. Monitoring



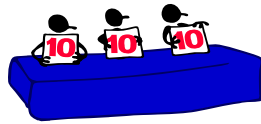
REQUIRED

Contract language must confirm the **LEA's responsibility for monitoring the food service operation through periodic on-site visits to make sure the food service is meeting the terms of the program regulations.** (7 CFR §210.16(a)(3))

This should include determining whether the food service operation is in agreement with the LEA's promise to operate the program in accordance with program regulations. Contract language should also confirm the LEA's responsibility to put into practice internal controls as required under 7 CFR 210.8(a) and to make sure any issues found during the program review and audit are solved.

REQUIRED

The contract must state that records must be made available to Comptroller General, USDA, the ADE, and the LEA, upon request for the purpose of making audit, examination, excerpts and transcriptions (7 CFR §3016.36(i)(11)).



7. Advisory Board

REQUIRED

Contract language must reaffirm that it is the LEA's responsibility to establish and maintain an advisory board made up of parents, teachers, and students to assist in menu planning. (7 CFR §210.16(a)(8))

If the LEA wishes to have the FSMC work within the advisory board, terms in the contract should name the specific FSMC responsibilities.

Meal Service Provisions

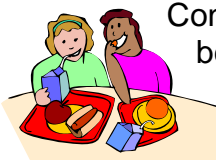
Contracts should also cover the range of services expected from the FSMC. These services include the types of meals provided by the FSMC and the splitting of responsibility for the various activities that make up meal services such as food purchasing and storage, preparation, service, meal ticket distribution and collection, and other related activities.



1. Descriptive Information Regarding Food Service

LEA's are encouraged to give specific information about the food service. Such information may be provided in a fact sheet that accompanies the IFB/RFP or in either the IFB/RFP. (Refer to *Chapter 1, Identify Scope of Work*, for examples)

2. Types of Meals to be Provided



Contracts should clearly specify what types of meals and other services will be provided (i.e., lunch, breakfast, a la carte and vending machine sales, adult meals and special event meals), the reimbursement category of those meals, and what programs will be offered. Unless the LEA intends to look for separate bids, the bids should cover all other meal programs managed by the LEA, e.g., the Child and Adult Care Food Program, the Summer Food Service Program and vended meals provided to other schools.

REQUIRED

Contract statements must specify that in order to offer a la carte food service, the FSMC must offer free, reduced price and full price reimbursable meals to all eligible children. (7 CFR §210.16(a))



3. Use of Menus

The LEA should develop the 21-day cycle menu for the bid/proposal. If the LEA is unable to develop a 21-day cycle menu.

REQUIRED

LEA's must include a 21-day cycle menu developed in accordance with meal pattern requirements specified in 7 CFR Part 210, in the IFB or the RFP. (7 CFR §210.16(b)(1))

If the LEA cannot prepare a cycle menu, it may, with ADE approval, request that a 21-day cycle menu be developed and submitted by each FSMC. However, ***a FSMC developed cycle menus are appropriate to use only under the competitive sealed proposal method of procurement since, in the absence of a uniform menu, the LEA will not have consistent information among bidders upon which to determine responsiveness and lowest bid price thus exposing itself to bid protests unnecessarily.***

REQUIRED

Contract language must state that the FSMC has to adhere to the cycle menu for the first 21 days of meal service, with changes thereafter made only with the approval of the LEA. (7 CFR §210.16(b)(1))

It is suggested that the LEA should ask that any changes to the cycle menu made after the first 21 days include foods that are priced the same and have the same quality of those items on the original cycle menu.

4. Quality, Extent and General Nature of Food Service

It is important for the LEA to be very specific in this section as it can make a difference in the quality of the foods served to the customers. Quality of the food can make a huge difference in program participation, which can impact how well, or how poorly the school food service department does financially. This may not seem like an important issue, but children can tell the difference between a 100% white breast chicken nugget and a chicken nugget that was produced with processed pressed chicken parts. Typically the higher quality product will look and taste better which are the two of the keys to better school meals and high participation.

REQUIRED

Contract language must state the LEA's responsibility to retain control of the quality, extent, and general nature of its food service. (7 CFR §210.16(a)(4))



There are few areas in this section that need to be addressed. They include specifications of the food products, samples, food testing and competitive foods and conditions of no payment.

❖ Specifications

In addition, the LEA must make sure that its IFB/RFP provides detailed specifications for each food component (meat or meat alternate, milk, bread or bread alternate and vegetable/fruit) or menu item specified in 7 CFR Part 210. Specifications must cover items such as grade, style, condition, weight, ingredients. It is crucial to be as specific as possible in this section about any food item for reasons discussed above.

If problems occur while writing this section, consider referring to other schools that may already have specifications outlined that would fit the schools needs. For more information about product descriptions and specifications visit our website:
www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp



These product descriptions and product specifications can be used when compiling the IFB/RFP. ***Please note that descriptions are more generalized, whereas specifications contain more specific detail.***

In some cases there is more than one example to show different ways that a product description or specification can be written. Pack size can be changed to fit to what best suits the district, or for approved brands, if desired.

Contract language should also include other standards, such as:

- ✓ Applicability of USDA major ingredient specifications
- ✓ Use of the Child Nutrition Labeling Program
- ✓ Applicability of USDA standards about the use of texturized vegetable protein fillers and extenders.

LEA's must not use information prepared by FSMC's in the IFB or RFP. For example, open and free competition cannot be compromised by providing product specifications on "brand name" products that only one FSMC or its distributor can supply.

❖ Samples

LEA's may want to consider including a contract statement that the FSMC hold onto meal samples for a 48-hour period to make sure that the procedures specified in FCS Instruction 782-2, Food Poisoning Outbreaks, are met.

❖ Food Testing

Contracts may also address food testing by the LEA, such as testing portion sizes and food temperature. This will also allow the LEA to make sure the quality of the foods meets their standards.



❖ Competitive Foods

According to 7 CFR 210.11, **LEA's must have control over the sale of foods sold in competition with school lunch and school breakfast.** Included are snacks and beverages sold as part of a la carte meal offering or through vending machines. LEA's may want to address the LEA's position regarding the kinds of foods to be offered, the location of vending machines, the hours of students' access to a la carte and/or vending machines, etc.

LEA's are encouraged to include statements that do not allow the sale of foods of minimal nutritional value (FMNV) in the food service area during a meal service. If these foods are served during a meal service period, all meals cannot be reimbursed for that meal service, which can result in a large financial loss if FMNV are sold on a regular basis during mealtime. So it is important that whoever has control over what is being offered and sold during the meal period understands and follows the regulations of the program.

❖ No Payment

REQUIRED

LEA's must include a statement to the effect that no payment is to be made for meals that are spoiled or unwholesome at time of delivery; do not meet detailed specifications as developed by the LEA for each food component or menu item specified in the meal pattern requirements of 7 CFR Part 210; or do not otherwise meet the requirements of the contract. (7 CFR §210.16(c)(3))

5. Activities Supporting Meal Services



Contracts for food services should also contain statements about activities that support food services, e.g., food purchasing (for cost-type contracts), menu planning, inventory and storage, and nutrition education, if desired. The general outline of what supporting services are recommended are listed below.

❖ General

Assigning the duties that the FSMC is responsible for strengthens contracts. These services may include, serving of meals, processing of meal tickets, meal service at special functions, lunch ticket sales, and food delivery to serving sites.

❖ Financial

Cost-reimbursable contracts for food services should also contain statements about payment of vendor bills and accounts. A common system is for the FSMC to take the responsibility for paying these bills and then billing the LEA for the costs. This is standard with a “cost-reimbursable plus a fixed-fee” payment plan.

Contract statements should specify the requirements for back-up documentation that supports the cost reimbursement portion of the invoice, e.g., supplier invoices for food costs, and time and attendance records for labor costs. Additionally, the contract should also specify the management controls and accountability procedures, if the LEA advances money at the start of the school year, and for administrative costs charged by the FSMC.

❖ Food Purchasing

In developing a cost-reimbursable contract, LEA's should add a range of controls over purchasing, including whether the FSMC is allowed to purchase from its own subsidiaries, whether the cost of products is the only factor determining the purchase, and how trade discounts are given back to the LEA.

If the LEA does the purchasing, any clauses that limit the selection of vendors to only FSMC-approved vendors are **not permitted**. Such statements may cause a limit to open and free competition. However, the FSMC can recommend vendors if asked.

In the case of cost-reimbursable contracts, the LEA should include a statement requiring a FSMC to show that the prices it is charging the LEA for food, supplies, etc., are reasonable and necessary. Additionally, LEA's should include a statement which requires a FSMC to submit documentation periodically (i.e. monthly) that backs up what the LEA was charged for each product purchased or makes such records available for the LEA to go over.

❖ Food Inventory and Storage

The LEA should also include statements that specify the details of the food inventory and storage to identify the responsible party. Responsibilities should be clearly defined to make sure that all duties are covered, e.g., who is responsible for food storage and maintenance of inventory and for conducting the starting inventory and the final inventory. Other factors to include in the contract are:

- a. Use of USDA donated foods on a first-in first-out basis.
- b. In cost-reimbursable contracts, whether the FSMC bills the LEA for foods when purchased or when used.
- c. The inventory system of how the food and supplies are handled at the beginning and end of the contract. For example, if the FSMC bills the LEA for supplies as purchased, rather than as used, the contract should make sure that the FSMC will purchase back unused supplies from the LEA at the end of the contract. This is to help prevent over-buying on the FSMC's part.

❖ Nutrition Education



If the LEA wants the FSMC to take any responsibility for nutrition education and other non-meal services associated with the meal service component of the FSMC operation, the specific responsibilities should be described in detail. The LEA may want to consider asking the FSMC to help put into place a healthy school environment model policy within their school that can improve the overall nutritional quality and environment of the school.

❖ Nondiscrimination

The LEA is always required to make sure that no child is discriminated against on the basis of race, color, national origin, age, sex or disability. Contract language must not reduce the intent of the nondiscrimination regulation.

❖ Free and Reduced Price Policy

FSMC's often put into practice meal-related portions of the free and reduced price policy, such as distributing tickets, getting accurate meal counts and preventing overt identification of free and reduced price eligible students. Contracts should include statements requiring the FSMC to keep to the LEA's free and reduced price meal policies.

Financial Provisions

Contracts between LEA's and FSMC's provide the groundwork for payments and management of the business relationship. LEA oversight is of particular importance given the range of financial terms and conditions of LEA-FSMC contracts, such as fee structures, cost controls and financial management. The financial requirements discussed below all go through the nonprofit school food service account.

1. Fee Structures

Federal program regulations permit two types of payment or fee structures in LEA contracts with FSMC's: a fixed-price or fee, and cost reimbursable-plus-a-fixed-fee. LEA's must make sure that contracts are limited to the fee structures allowed by regulations.

REQUIRED

Contracts are not permitted to contain a "cost-plus-a-percentage-of-cost" or "cost-plus-a-percentage-of-income" provision. (7 CFR §210.16(c))

The definition of a fixed-price or fee and cost reimbursable-plus-fixed-fee payment plans are outlined below:

- ❖ Fixed-price/fee, which is allowed either under an IFB or RFP, takes the form of a unit charge where the unit may be per meal or per time period, typically a year. For example, the FSMC might charge \$1.50 per meal or \$50,000 per year. In each instance, the fee charged is expected to cover all operating and administrative costs with no additional charges to the LEA.
- ❖ A cost-reimbursable contract, which is not permissible under an IFB, permits the FSMC to pass food service operating costs through to the LEA and charge an additional fixed- or flat-fee that covers management and administrative costs.

The fee may be described in different ways, e.g., service fee, management fee, administrative fee, or a combination of any of these. A "cost reimbursable-plus-fixed-fee" contract may also have multiple fees. There may be a per meal cost and an annual fee. Also one fee might be called an administrative fee and another a management or service fee; typically, the administrative fee represents overhead costs and the management fee represents the profits. Be sure that if both terms are used, that a specific definition and detailed description of each is included in the contract to avoid double charging for the same service.

2. Control of the Nonprofit School Food Service Account

REQUIRED

Contracts must include a provision that makes it clear that the LEA retains control of the nonprofit school food service account and overall financial responsibility for the nonprofit food service operation. (7 CFR §210.16(a)(4))

Under cost reimbursable-plus-fixed-fee contracts, all revenue, including refund payments for processed end products, and any expenses that are charged to a LEA must flow through the LEA's food service account(s). Revenue can be used only for the LEA's nonprofit school food service program and cannot accrue to the FSMC. FSMC expenses that are not billed to the LEA cannot be recorded as expenses to the food service account.

REQUIRED

In addition, contracts must include a provision that reaffirms that the LEA establishes all prices, including price adjustments, for meals served under nonprofit school food service account (e.g., pricing for all reimbursable meals, a la carte service and vending machines, and adult meals). (7 CFR §210.16(a)(4))

❖ A La Carte Conversion (Per Meal Equivalency)

A component of the overall payment structure is the manner in which a la carte food service is counted and valued in a fee per meal contract. In a fee per meal contract, the FSMC is paid on the basis of the number of meals served. In order for a FSMC to be paid for the a la carte food service, many LEA's convert a la carte food service activity into an equitable number of reimbursable lunches. The conversion of the a la carte activity into an equitable number of lunches is termed the "per meal equivalency."

Contracts should define a per meal equivalency that fairly relates to the cost of producing the reimbursable lunch. One means of obtaining the per meal equivalency is by dividing the total cost of producing a la carte items sold by the unit cost of producing a reimbursable lunch.

Absent cost data, for non-reimbursable meals the number of meal equivalents shall be determined by dividing the total of all sales except reimbursable meal sales (including cash for adult meals, a la carte meals, and snack bar sales) by the approved free lunch reimbursement rate plus the per meal value of commodities of the current school year.

❖ Adult Meals



Adult meal charges must be established in accordance with FCS Instruction 782-5, Pricing of Adult Meals in the National School Lunch and School Breakfast Programs. Under that instruction, "Breakfasts and lunches served to teachers, administrators, custodians and other adults must be priced so that the adult payment in combination with any per-lunch revenues from other sources designated specifically for the support of adult meals (such as State or local fringe benefit or payroll funds, or funding from voluntary agencies) is sufficient to cover the overall cost of the lunch, including the value of any USDA entitlement and bonus donated foods used to prepare the meal. "

If cost data are not available, the minimum adult payment should reflect the price charged to students paying the school's designated full price, plus the current value of Federal cash and donated food assistance (entitlement and bonus) for full price meals. In non-pricing programs, the adult charge should be at least the amount of reimbursement received for a free lunch under Sections 4 and 11 of the National School Lunch Act, plus the per-meal value of both USDA entitlement and bonus donated foods or, for breakfasts, the rate established for free meals under Section 4 of the Child Nutrition Act, plus the value of bonus commodities.

❖ **Changes in Prices Charged for Meals**

While contract language that ensures that the LEA retains control over pricing is required, language that provides the LEA some formal means of changing prices is recommended.



❖ **Special Functions**

When reviewing cost-type contracts, particular attention should be given to the scope and pricing of special functions, which are conducted outside of the nonprofit school food service. Contract language should include a provision that prohibits the use of USDA donated foods or processed end products containing USDA donated foods for such functions. Separate billings for special functions are preferable to ensure that school food service costs and special function costs are not intermixed, thus preventing double billing.



❖ **Vending Machines**

Contracts should include a provision, which sets forth the LEA's position on vending machines, if applicable. This provision may include the LEA's position on the ownership of the machines, responsibility for maintenance, control of the revenues they generate, etc.

❖ **Adjustments to Payments**

The fee structure prescribed in a contract may require adjustment if actual experience does not conform to the assumptions upon which the original fee structure was based. Such cases may include unanticipated drops in enrollment or lowering of Federal reimbursement rates. Contracts may contain language permitting the LEA and FSMC to examine and renegotiate payment terms. Fee adjustments may not, however, be permitted unless provided for in the IFB or RFP and incorporated into the contract.

Any methods and basis for fee adjustment upon renewal must be addressed in the original contract. LEA's should consider limiting fee increases in some way, e.g., to no more than the percentage of change in the Consumer Price Index for All Urban Consumers.

Contracts that allow a FSMC to renegotiate its flat fee rate when a "guaranteed volume" has not been achieved are discouraged because this may inhibit open and free competition. FSMC's may provide an artificially low bid if it were thought that a guaranteed volume could not be achieved. Actual participation is dictated by the quality of the meal service over which the FSMC would have direct control.

❖ **Meal Program Cost Controls**

Cost and reporting controls must exist. Specifying the types of reports required of the FSMC provides a LEA with one important means of monitoring performance.

- **Program Cost Accounting and Reporting**

As appropriate, LEA's should require periodic reports on operations and state whether the contract is to include monthly profit and loss statements or operating cost reports, daily meal counts, and end of year financial statements.

- **Control of Food Service Equipment Purchases**

Food service equipment represents a major capital investment for LEA's. The addition or replacement of equipment by the FSMC without prior approval from the LEA presents a risk to the LEA. Contracts should provide the LEA with final, prior approval authority for the purchase of equipment that would be used in the storage, preparation and delivery of school meals. Contracts should establish an amortization schedule, if appropriate. Whether or not an amortization schedule is used, title to the property must be vested with the LEA when the equipment is placed in service.

Clauses that require the full repayment of unamortized costs incurred by the FSMC when the contract is terminated or not renewed are not permitted. The contract should state that the LEA can retain the property and continue to make payments in accordance with the amortization schedule or return the property to the FSMC in full release of the unpaid balance. Payment of interest on borrowing, however represented, is an unallowable cost under OMB Circular No. A-87, Cost Principles for State and Local Governments.

- **Performance Security**



A performance security, or bond, is a method available to a LEA to obtain financial recourse in the event that the FSMC fails to perform in a satisfactory manner or defaults on its duties and responsibilities. The performance security would be specified as a flat amount or as a percent of the estimated value of service.

A performance security or bond must be from a surety company listed in the most recent U.S. Department of Treasury Circular 570. LEA's, however, are reminded that unnecessary experience and bonding requirements to be restrictive of competition. For example, a \$10 million bond would be unnecessary for a \$1 million contract.

❖ **Operating Cost Guarantees and Recovery**

- **Guarantees**

Contracts for food services may also contain language by which the FSMC guarantees to meet fiscal goals specified by the LEA. Any guaranteed return promised by the FSMC must remain in the nonprofit food service account. If the contract contains such guarantees, the contract should also contain language that ensures that the FSMC bears responsibility for failure to meet those goals. "Returns" cannot be contingent upon multi-year contract duration.

- **Loss Recovery**

Contracts are the appropriate place to address liability for losses. Contracts usually address FSMC liability in one of two ways: the FSMC may either be required to reimburse the LEA for the loss without limit or it may reimburse the LEA with limits equal to the management fee or a specified ceiling. Contracts should also address the length of time the LEA can seek recovery of losses. LEA's should seek recovery of any losses for a period of time corresponding to the LEA's period of liability.



- **Recovery of Overclaims**

LEA's are encouraged to add a provision in the contract that requires the FSMC to pay the LEA for any overclaims assessed by the ADE due to FSMC negligence or noncompliance with regulations. This liability should correspond to the 3-year record retention period established by the State. (Refer to the paragraph concerning "Nonperformance" in this chapter).

- **Negligence**



It is also suggested that any waiver of liability by the LEA for damages by the FSMC to equipment or facilities contain an exclusion to this waiver for any damages caused by negligence

Other Provisions

❖ Reporting and Record keeping Requirements



REQUIRED

Contract language must ensure that the FSMC maintains such records as the LEA will need to support its claim for Reimbursement and must, at a minimum report claim information to the LEA promptly at the end of each month. Contract language must state that such records be made available to the LEA upon request. (7 CFR §210.16(c)(1))

Contract language should ensure that FSMC's maintain appropriate business records, as applicable, e.g., food and supply bid specifications, purchase orders, invoices, and personnel records that relate to the provision of food services to a LEA.



REQUIRED

Contract language must ensure that the FSMC retains records to support the LEA's Claim for Reimbursement for the daily number of meals served, by type. (7 CFR §210.16(c)(1))

The LEA may want to require reports of program income by school and expenditures, meals served to adults, value of a la carte sales, value of USDA donated foods including processed USDA donated foods, and amount of milk served.

It is recommended that all FSMC records pertaining to the LEA be maintained at the LEA while the contract is in effect, and copies of those records be delivered to the LEA at the conclusion of the contract.

REQUIRED

Contract language must ensure that the FSMC adheres to the record retention requirements, i.e., records must be retained for a period of three (3) years after the LEA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the LEA, ADE, USDA and the Comptroller General, at any reasonable time and place.

Contract language must stipulate that if audit findings have not been resolved, the records must be retained beyond the 3-year period for as long as required for the resolution of the issues raised by the audit. (7 CFR §210.16(c)(1), §3016.36(i)(11)).

LEA's/FSMC's may retain necessary records in their original form or on microfilm. Contracts should stipulate whether original or microfilm records are required and that records are:

- Maintained in such a way that they are easily accessible;
- Available upon demand; and
- Available at the LEA premises rather than at an FSMC location.

❖ Facilities Management

Contracts should clearly define the responsibilities for food service facilities and operations, such as providing the meal preparation and service facilities, repair and maintenance of equipment, cleaning of the dining areas, trash removal, exterminator services, and repairs.

❖ Hiring and Personnel Practices



Contracts for food services generally contain language about personnel management including hiring practices, management of staff and employee benefits.

- LEA and FSMC Staff

Contract language should enable the LEA to have final approval authority for the FSMC's school lunch manager. The LEA may want to consider including educational requirements and experience requirements for the school lunch manager position.

Contracts may have provisions against cross-hiring. Cross-hiring refers to the hiring of staff by one party to a contract when such employees are employed by the second party to the contract. Such practices would be of concern if the LEA sought to hire a member of the FSMC staff rather than renewing the contract.

Cross-hiring provisions by either the LEA or the FSMC should be reviewed by the LEA's legal counsel to ensure compliance with Federal and State labor laws.

- Personnel Management

Contracts should define responsibility for personnel management in some fashion. In general, FSMC's are responsible for personnel management, even when the staff they are managing are employees of the LEA. Management activities may include employee and labor relations, personnel development, and hiring and termination of management staff. Contracts should also specify responsibility for non-management staff hiring and firing.

- Employee Benefits



Contracts should define responsibility for employee benefits and refer to the responsibilities placed upon the FSMC with respect to its own employees. The benefits identified in contracts may include medical benefits, insurance, retirement and holiday pay.

- ❖ Insurance Requirements



To protect the interests of the LEA, contracts for food services should also contain language about insurance requirements for the FSMC's. Contracts generally identify three liabilities, i.e., comprehensive general liability, workman's compensation, and vehicle insurance. LEA's, however, are reminded that the cost of unnecessary insurance is unallowable under the Federal cost principles.

- ❖ Nonperformance

REQUIRED

In addition to the "no payment" provision identified under the "Meal Service Provisions" section of this chapter, all contracts must contain provisions that allow for administrative, contractual, or legal remedies on instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (7 CFR 3016.36 (i)(1))

LEA's should add a provision in the contract language that requires the FSMC to pay the LEA any overclaims due to FSMC negligence or noncompliance with regulations, including those overclaims based on review or audit findings.

It is recommended that the time limit established in the contract for this provision correspond to the State record retention timeframe of 3 years.

- ❖ Contract Duration



REQUIRED

The contract language must identify a beginning and ending date to ensure that the contract between the LEA and the FSMC is no longer than 1 year in duration. (7 CFR §210.16(d))

The beginning date should not be prior to the date the contract is signed.

REQUIRED

Options for yearly renewal of a contract must not exceed four (4) additional 1 year extensions. (7 CFR §210.16(d))

The basis for renewing the contract, including price increase or decrease provisions, if any, should be stated in the contract and IFB/RFP, as appropriate. Price increase/decrease provisions should be based on a measurable index such as the

Consumer Price Index for All Urban Consumers.

❖ **Termination Clause**

REQUIRED

All contracts must contain a termination clause whereby either party may cancel for cause with 60-day notification. (7 CFR §210.16(d))

REQUIRED

All contracts in excess of \$10,000 must contain suitable provisions for termination by the LEA, including the manner by which it will be effected and the basis for settlement. Such contracts must describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be terminated because of circumstances beyond the control of the FSMC. (7 CFR 3016.36 (i)(2))

LEA's may also want to include a termination for convenience clause that provides adequate advance notice that would permit the LEA sufficient time to arrange alternate food service if the FSMC exercises the clause.

REQUIRED

All contracts must include certification of compliance with the provisions of the following Acts and regulations, as specified below

- For all contracts: 

REQUIRED

Energy Policy and Conservation Act. (7 CFR 3016.36(i)(13)).

- For contracts in excess of \$2,500:

REQUIRED

Provisions of the Contract Work Hours and Safety Standards Act for those contracts involving food service workers whose duties are manual or physical in nature. (7 CFR 3016.36(i)(6)).

- For all contracts in excess of \$10,000:

REQUIRED

Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 and Department of Labor regulations. (7 CFR 3016.36(i)(3))

- For any contracts involving research, developmental (such as software), experimental or demonstration work:

REQUIRED

The requirements established in USDA regulations concerning USDA rights in data and reporting of discoveries and inventions. (7 CFR 3016.36(i)(7-9)).

- For all contracts of \$100,000 or more:

REQUIRED

Debarment, Suspension, Ineligibility and Voluntary Exclusion
--Lower Tier Covered Transactions. (7 CFR Part 3017)

LEA's should contact ADE for further information regarding debarment and suspension. For copies of certification documents visit our website at: The FSMC and not the LEA is required to sign this certification. Contract renewals must include a newly signed certification.

- For all contracts in excess of \$100,000 (cont'd)

REQUIRED

Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations. (7CFR 3016.36(i)(12))

Certification Regarding Lobbying, pursuant to 31 USC 1352, (7 CFR Part 3018)

In accordance with the provisions of 7 CFR Part 3018, FSMC's who bid for an award exceeding \$100,000 must submit a certification regarding lobbying which conforms in substance with the language provided in 7 CFR Part 3018.

REQUIRED

Disclosure of Lobbying Activities, pursuant to 31 USC 1352, (7 CFR Part 3018)

In accordance with the provisions of 7 CFR Part 3018, FSMC's who bid for an award exceeding \$100,000 must disclose Federal lobbying activities in connection with school nutrition programs. LEA's should contact the ADE for further information regarding disclosure of lobbying activities.

- ❖ **Optional Contract Provisions- Not required, however, LEA's are encouraged to include the following provisions. For a complete visit our website:**

www.ade.az.gov/health-safety/cnp/nslp/Operating/ContractingforMealService.asp



- **USDA Donated Foods**

Method which delineates how the FSMC will pass the value of USDA donated foods used to the LEA as a credit.

Specific statement that USDA donated foods are not to be used for special functions conducted outside the non-profit school food service.

- **Special Functions**

Method which delineates the cost allocation for special functions (ie, catering, meetings, etc.) conducted outside the non-profit school food service. The method should demonstrate that labor costs are not being billed for program meals and special function meals.

- **Purchasing**

A provision stating that any silence, absence or omission from the contract specifications concerning any point must be regarded as meaning that only the best commercial practices are to prevail, and that only materials (food, supplies, etc.) and workmanship of a quality that would normally be specified by the LEA is to be used. This provision should be contained in both the IFB/RFP and the contract.

- **Certification of Independent Price Determination** (also known as “non-collusion statement”)

While not required by program regulations, it is strongly suggested that LEA's and FSMC's certify that the prices in the offer have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.

Unallowable LEA-FSMC Contract Document Provisions

The following indicate problem areas that have been identified in LEA-FSMC contract documents. The contract documents must be thoroughly checked, regardless of the procurement method used, to ensure that these areas have not been included, in any form.

- **Cost Plus a Percentage of Cost/Income**-cost plus a percentage of cost/income to the FSMC, however represented. **§210.16(c).**
- **Duplicate Fees**-fee structures that permit a FSMC to bill management fees and charge the same costs as cost-reimbursable expenses
- **Purchasing**-if the LEA does the purchasing, clauses that limit the selection of vendors to only FSMC-approved vendors.
- **Acceleration Clause**-provisions (multi-year) that require full payment (e.g.,

program equipment purchases) if the contract is not renegotiated.

- **Interest Payments**-interest payments to the contractor, however represented, including interest payments for equipment purchases. **OMB Circular A-87**
- **Delegation of LEA Responsibilities**-FSMC responsibility for any of the functions that must be retained by the LEA.
- **Automatic Renewal**-provisions which automatically renew the contract.
- **Processing Contracts**-contract document language that permits the FSMC to subcontract USDA donated foods for further processing.

Chapter 6

ADE Review

Timing

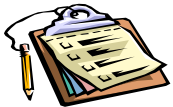
Under 7 CFR 210.19(a)(6), the ADE **must** review the LEA-FSMC contract documents, i.e. contracts, completed IFBs/RFPs that become signed contracts and all contract renewals.



All competitive sealed bids and proposals must be reviewed and approved by ADE. Therefore, sufficient time should be allowed for ADE to conduct the review and make any recommendations if necessary. **The solicitation documents MUST not be made available to the public until prior approval is received from ADE.**

ADE must also review and approve the contract before the document is signed. Upon approval from ADE a signed copy of the contract must be sent to ADE. A completed on-line application **must** also be approved to receive reimbursement for claims.

Contract Checklist



The LEA-FSMC Contract Document Checklist is on our website:

www.ade.az.gov/health-safety/cnp/nsfp/Operating/ContractingforMealService.asp

The checklist should be completed by the LEA and submitted with documents to be reviewed by the ADE.

Response to ADE Comments

The ADE comments must be accommodated into the IFB/RFP and/or contract. Once the comments are incorporated into the documents, another ADE review on the documents is performed. Approval will be given upon a properly completed document. Any revision required by the ADE for the IFB/RFP and/or final contract must be accommodated before a contract can be finalized.



As a reminder, the Certification Regarding Suspension/Debarment, the Certification Regarding Lobbying and the Disclosure of Lobbying Activities must be attached to the contract. The Certification Regarding Suspension/Debarment must have the signature of a FSMC representative while the Certification Regarding Lobbying and the Disclosure of Lobbying Activities must have the signatures of a representative from **both** the FSMC and Local Education Agency.

Chapter 7

LEA Monitoring/Recordkeeping Responsibilities

Monitoring



Under 7 CFR 210.19(a)(6), the ADE shall perform an on-site review of each Local Education Agency (LEA) contracting with a food service management company, at least once during each 5-year period.

The LEA should monitor the operation of the FSMC through periodic on-site visits to ensure that the FSMC complies with the contract and any other applicable Federal, State and local rules and regulations. The LEA should maintain documentation of its monitoring, any corrective action required, and whether or not corrective action was taken. The LEA's contract monitoring responsibilities include, but are not limited to evaluating:

Cycle Menu-adherence to the cycle menu and any and all deviations allowed under the contract.

Meal Pattern-adherence to the meal pattern requirements specified in 7 CFR Parts 210 and/or 220.

Claim Documentation-records, by school, to support the Claim for Reimbursement (meal/milk counts and any other data on the claim for which the FSMC is responsible).

Cost Records-cost records, including source documentation supporting charges for contractually approved costs for cost-based contracts, e.g., time and attendance records for staff hours charged.

Meal Count Records-meal count records for meals not covered by the Claim for Reimbursement, e.g., adult meals, etc.

Revenue Records-revenue records broken down by source, type and category of meal or food service, e.g., a la carte sales, reduced price and full price NSLP and SBP meals, vending machine sales, etc.

Outside Activities-outside food service activities.

Preparation Facilities-the FSMC meal preparation facilities.

USDA Donated Foods-the proper utilization and value of USDA donated foods is applied.

Additional Monitoring Responsibilities

The LEA must conduct on-site school reviews and must monitor through these reviews and by other means:



Civil Rights-compliance with civil rights requirements. In addition to monitoring compliance, the LEA must ensure the FSMC complies with the procedures established by the LEA for referring any civil rights complaints to the LEA.

Free and Reduced Price Policy-adherence to the LEA's approved free and reduced price meal policy statement.

Offer versus Serve-compliance with offer versus serve requirements.

Competitive Foods-compliance with the competitive foods requirements of the NSLP regulations in all schools by all parties.

LEA Policies-compliance with all policies established by the LEA.

Recordkeeping Responsibilities

The LEA must maintain any books, documents, papers and records directly pertinent to: the solicitation, award or extension of any given contract and the implementation of that contract. Such records must be maintained for a period of 3 years. If audit findings have not been resolved, the records must be retained beyond the 3 year retention period for as long as required for the resolution of the issues raised by the audit.

Chapter 8

Contract Duration/Renewals

Duration

Per 7 CFR 210.16 (d) contracts must be of a duration **no longer than one-year**, with the effective beginning and ending dates stated in the contract. The beginning date should not occur prior to the date the contract is signed. Annual renewal periods are allowable as long as they do not exceed four (4) additional one-year extensions from the original contract period. Contracts **must** not contain automatic renewal provisions. Any provisions, including adjustments to payments that will be used for renewing contracts must be stated in the contract and the IFB or RFP, as applicable. The following changes would not constitute material changes to the contract, however, please refer to the terms and conditions of the contract or contact the ADE/Health and Nutrition Contracts Officer for assistance.

Number of Schools-new schools added;



Changes in Enrollment-decreases and increases in student enrollment and the corresponding change expected in participation; **Changes in Price**-meal price changes (determined by the LEA);

Cost Increases-cost increases limited to a measurable index (such as the Consumer Price Index for All Urban Consumers); and



Meal Equivalency-minor adjustments to the per meal equivalency.

Examples of material changes which may require the LEA to rebid the contract include but are not limited to the following: the addition of a program, such as the SBP or SFSP; major changes to the formula for determining meal equivalency; a major shift in responsibilities for LEA/FSMC staff; and significant changes in the basis for determining guaranteed returns. **However, ADE reserves the right to review a material change for compliance with the original solicitation documents in the interest of open and fair competition.**

Renewals

While contract renewals are permitted, a LEA is not required to renew the contract for an additional year and should do so only after careful evaluation of the FSMC's performance and a determination that the renewal will benefit the LEA. Among the elements that should be used when deciding whether to renew a contract are:

Performance-the overall performance of the FSMC in accordance with the contract provisions, including the FSMC's completion of planned activities as described in the contract. The LEA should document its findings while conducting its monitoring requirements of the FSMC and refer to these documents when making this determination. In addition to reviewing the deficiencies noted in the FSMC's performance, the LEA should review the effectiveness of the FSMC's corrective action plans.

Meal Quality-meal quality, including adherence to menu cycle/food specifications, and complaints.



Costs-the full cost of using a FSMC versus the projected costs under the contract.

Financial Status-the overall financial status of the food service operation and the food service account.

Unexpected Costs-any unexpected costs incurred as a result of using an FSMC, and any unexpected cost reductions that have resulted from using a FSMC. The LEA should ascertain these costs based on information received from the FSMC and other sources.

Participation-participation trends including NSLP/SBP participation compared to a la carte sales.

Advisory Board-the comments and recommendations of the advisory board and the FSMC's responsiveness to these recommendations.

Adjustments to Payments-any increase in the prices requested by the FSMC or any change in the basis upon which the FSMC is paid.



Use of USDA Donated Foods-utilization of USDA donated foods, including the current inventory on hand.

Corrective Actions-recommendations from local, State and Federal reviews and audits, including the status of required corrective actions.

Note: reimbursements will not be paid to the LEA until all contract documents have first been approved by ADE including the CNP on-line sponsor and site applications. If you have any questions about the on-line application process contact your program specialist at 602-542-8700 or 1-800-352-4558.